



Commonwealth
of Massachusetts

OCPF Online
www.state.ma.us/ocpf
Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

March 18, 1999
AO-99-02

Timothy B. Gassert
Local Government Advisor and Public Access Officer
Townonline.com
254 Second Avenue
Needham, MA 02494

Re: Providing web site space for constituent service sites and political advertisements

Dear Mr. Gassert:

This letter is in response to your February 17, 1999 request for an advisory opinion regarding the provision of web site space for constituent service sites and for political advertisements.

Facts

Community Newspaper Company's ("CNC") web site "Town Online" includes a program that allows local organizations to build their own web sites within Town Online ("the Sites"). Any group that has a computer with Internet access and a password can use the self-publishing utilities ("Utilities") available through the program to add content (including text and images) to a web site bearing the group's identity. Participants do not need special software and training is provided for those who need assistance in creating their sites. There is no charge to participants in the program.

CNC is contemplating allowing elected (and appointed) officials to post constituent service sites, free of charge, using the Utilities. In addition, CNC would like to sell advertising to candidates for political office for placement into Town Online.

1. Constituent service sites.

Under this plan, officials would be provided with training to use the Utilities if requested. Officials would have complete editorial control over their Sites, but would be required to sign a standard agreement promising to conform to certain editorial guidelines. These guidelines prohibit use of the Sites to violate the rights of others or to post offensive content. In addition, the agreement for such officials would require that the content of the Sites be limited to background and official matters and would expressly prohibit use of the Sites for "campaign purposes."

You have stated that access to the constituent service sites would not be given to promote the candidacy of persons creating web sites, but instead would be given to extend the historic role of newspapers in covering government activities and to further First Amendment discourse among

constituents. CNC is planning to make the offer to all officials for particular offices in selected towns or districts. Currently, CNC is contemplating limiting the offer to state representatives and senators. If appropriate, CNC may expand the program to include municipal officials.

2. Advertising.

CNC, as with its print publications, sells advertising for placement into Town Online. Such advertising is similar to that sold into print publications and includes local, regional and national retailers or service providers. In Town Online, the advertising may consist of a banner advertisement that would appear along with news or other stories or features. The presentation of a banner advertisement is similar to the presentation of advertisements in newspapers. Advertising on Town Online, however, may include hypertext links to advertiser web sites. The link may be the banner advertisement or a listing in an online directory.

The offer would be the same for all prospective candidates, and no candidates would be denied the opportunity to purchase such Campaign Sites or advertisements. The only limitation on the content of the Campaign Sites or other political advertising would be editorial guidelines comparable to those enforced by the newspapers (e.g., advertisements in the final week of a campaign may not mention opponents by name).

Questions

- (1) May a newspaper company offer free space on its web site to allow elected (and appointed) officials to post constituent service sites?
- (2) May the newspaper company sell advertising to candidates for political office for placement into its online web site?

Answers

Yes, for both questions.

Discussion

(1) Constituent Service Sites

The campaign finance law prohibits business corporations from directly or indirectly contributing any money or other thing of value to promote or oppose any candidate or political party. See M.G.L. c. 55, § 8.

A “contribution” is something of value given to a candidate or political committee “for the purpose of influencing the nomination or election” of the candidate. See M.G.L. c. 55, § 1.

You have stated that currently CNC is planning to make the offer to state representatives and senators in selected towns or districts. Assuming that the decision as to which towns or districts is based on a non-partisan reason (e.g., these are the towns covered by CNC), such a plan would not appear to involve the making of “contributions” to the officials. If, on the other hand, the towns or districts are

chosen for partisan or political reasons, e.g. an interest in supporting particular officials, then the implementation of the plan might involve the making of a “contribution.”

(2) Advertising

The campaign finance law prohibits business corporations from directly or indirectly contributing any money or other thing of value to promote or oppose any candidate or political party. See M.G.L. c. 55, § 8. If a media organization (a term defined by section 8A of the campaign finance law to include newspaper corporations) sells space for a political advertisement, no “contribution” occurs if fair market value is paid for the ads and all candidates are offered space on the same terms and conditions.¹

Because space for the ads would be made available on the same terms for all prospective candidates the making of the ads would not involve a prohibited corporate contribution. The fact that the ads may include hypertext links to advertiser web sites should not affect this conclusion.

This advisory opinion is issued solely within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter.

This office appreciates your interest in the campaign finance law. Please contact us if you have further questions.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan". The signature is fluid and cursive, with a long horizontal line extending to the right.

Michael J. Sullivan
Director

¹ Similarly, if a media organization provides free space to all candidates interested in creating web sites to advertise their candidacy, no “contribution” occurs. See GL-99-04. The campaign finance law exempts, from the definition of “contribution,” the provision of free or discounted time or space to candidates by media organizations for the purpose of presentation of the candidate’s own political advertising if the free or discounted time or space is also offered to all other qualified candidates for the same office. See M.G.L. c. 55, § 8A.